

REMARKS

Applicants thank the Examiner for the withdrawal of the 35 U.S.C. § 101 and the 35 U.S.C. § 102(b) rejections of Claims 3 and 7 and Claims 9-10 respectively.

Entry of the forgoing and further and favorable consideration of the subject application are respectfully requested. As stated correctly in the Final Office Action, Claims 1-13 are pending. The Examiner has finally rejected Claims 1-13.

By the present amendment, Claims 1, 5 and 9 have been amended to remove the vague language “selected from the group consisting”, as such claims only recite the previously elected nucleotide or polypeptide sequence. No prohibited new matter has been introduced by way of the above amendments. Claims 11-13 have been cancelled. Applicants reserve the right to file a division or continuation on the cancelled subject matter.

35 U.S.C. § 112, first paragraph Rejection – Written Description

The Examiner has rejected Claims 1-13 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants respectfully traverse. Applicants note that Claims 11-13 have been cancelled by the foregoing amendments, thus rendering any rejection of the cancelled claims moot. Specifically, the Examiner alleges that “without providing description of both a start and stop codon, Applicants have only provided support for the specifically identified fragment” encoded by SEQ ID NO:20623, and that accordingly one of skill in the art would conclude that the disclosure fails to provide a representative number of species to describe the genus. For the reasons set forth herein, Applicants respectfully disagree and assert that pending Claims 1-10 are fully supported in the Specification in accordance with the written description requirement of 35 U.S.C. §112, first paragraph.

The guidelines for examination of patent applications under 35 U.S.C. § 112, first paragraph, “written description”, as shown in the Federal Register Vol. 66, No. 4, at page 1100, state:

The Guidelines have been revised to clarify that an applicant must provide a description of the claimed invention which shows that applicant was in possession of the claimed invention. The suggestion to emphasize that the written description requirement must put the public in possession of the invention has not been adopted... The written description requirement, a question of fact, ensures that the inventor conveys to others that he or she had possession of the claimed invention...

The Federal Register, Vol. 66, No. 4, at page 1103 also states:

The written description requirement does not require the applicant 'to describe exactly the subject matter claimed, [instead] the description must clearly allow *persons of ordinary skill in the art* to recognize that [he or she] invented what is claimed.' Thus § 112, ¶ 1, ensures that, as of the filing date, the inventor conveyed with reasonable clarity to *those of skill in the art* that he was in possession of the subject matter of the claims. (emphasis in original).

The standard for the written description requirement is also described in M.P.E.P. § 2136.

In relevant part, the test is described as follows:

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 U.S.P.Q.2d 1961, 1966 (Fed. Cir. 1997). Possession may be shown in a variety of ways including . . . the disclosure of drawings or structural chemical formulas that show that the invention was complete, or by describing distinguishing identifying characteristics sufficient to show that the applicant was in possession of the claimed invention. See, e.g., *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 U.S.P.Q.2d 1641, 1647 (1998); *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1568, 43 U.S.P.Q.2d 1398, 1406 (Fed. Cir. 1997); *Amgen, Inc. v. Chugai Pharmaceutical*, 927 F.2d 1200, 1206, 18 U.S.P.Q.2d 1016, 1021 (Fed. Cir. 1991)(one must define a compound by "whatever characteristics sufficiently distinguish it"). M.P.E.P. § 2163(I).

A disclosure “is sufficient if the disclosure teaches those skilled in the art what the invention is and how to practice it.” *In re Grimme, Keil and Schmitz*, 124 U.S.P.Q. 449, 502 (C.C.P.A. 1960). Furthermore, “there is no per se rule that an adequate written description of an invention that involves a biological macromolecule must contain a recitation of known structure.” *Falkner v. Inglis*, 79 U.S.P.Q.2d 1001 (Fed. Cir. 2006). “Indeed, a requirement that patentees recite known DNA structures, if one existed, would serve no goal of the written description requirement. It would neither enforce the quid pro quo between the patentee and the public by forcing the disclosure of new information, nor would it be necessary to demonstrate to a person of ordinary skill in the art that the patentee was in possession of the claimed invention.” *Id.*

The Examiner must set forth express findings of fact which support an alleged lack of written description conclusion. These findings should (a) identify the claim limitation at issue and (b) establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. M.P.E.P. § 2163.05 (Statement of Rejection Requirements)

Claims 1-13 have been rejected for allegedly failing to provide description of both a start and stop codon, and that Applicants have only provided support for the specifically identified fragment encoded by SEQ ID NO:20623. Applicants respectfully disagree. The Specification provides that the *A. fumigatus* sequences were analyzed for the presence of open reading frames comprising at least 180 nucleotides, for example at page 28, lines 23-24. The Specification, for example at page 33, line 25 through page 34, line 9, further states that Table 2 provides a list of open reading frames, a region of nucleic acids which encodes polypeptides, which was determined from stop to stop codons. Applicants assert that further analysis was performed to further identify open reading frames. For example, the Specification, at page 34, lines 1-3, teaches that the particular functions of the polypeptides encoded by each open reading frame were then predicted based on homology matches with known proteins encoded by open reading frames in other organisms.

The Specification teaches, at page 34, lines 11-13 that, "It will be recognized by one skilled in the art that the natural translation initiation sites will correspond to ATG, GTG or TTG." Furthermore, the Specification, at page 34, lines 19-20, also teaches that "[t]he correct start codons can be generally identified without undue experimentation because only a few codons need be tested". Additionally, Applicants have provided the Sequence Listing for the nucleic acid and amino acid sequences. Specifically, the Sequence Listing provides that the nucleic acid sequence encoding SEQ ID NO:20623 is as follows:

agttccatc	taacagccta	cagcttcaag	gacgatgttc	tcgatgtcat	<b>catgtcgcaa</b>	60
cgtgaaaagc	ggaatgaggc	<b>tatggcgatg</b>	gctgcggagg	ccgatatgga	tgcggctgcg	120
gtccctcga	<b>tgtttctcc</b>	cgagttagct	cgctgataca	cactcaattt	caagcctctt	180
actccgtctg	ggtcgagcag	cgaccggtac	tccaaggctc	tcgcagtcctg	taat <b>gtcg</b> ga	240
gcagagcacc	tgggtagtct	gatcacgggt	cgcggtatta	caactcgtgt	ctcggacgtc	300
aaaccatcag	tccagatcaa	cgcttatact	tgcgatcggg	gtggatgcga	<b>agtgtt</b> cag	360
ccagttacca	caaaacaatt	tctgcctatg	actgagtgtt	<b>tgtctgaaga</b>	gtgcaagcag	420
aacaactcga	agggacaatt	gtttctttcc	actcgtgcct	cgaatttgt	tccctccag	480
gaggtcaaga	tccaagaaat	ggcagatcag	gttcctgttg	gtcacattcc	acgaacacta	540
accattcact	gccatgggag	tctgacacga	caactcaacc	ctggagatgt	tgctgacgtc	600
gcgggcatct	tcttcccac	accttacacc	gggttcaggg	ccatccgtgc	<b>cggcctcttg</b>	660
accgacacat	<b>acttgg</b> aagc	tcagcatac	acacatcaca	agaagtcgta	caatgatctg	720
acgatggaca	gccagacgct	ccgaaagatt	gaacagtacc	aaaagtctgg	aaatatgtac	780
gagtacctgt	ctcgttccat	cgctcccag	atttacggcc	atcttgacgt	gaagaaagcc	840
<b>ttgctt</b> cttc	tacttattgg	aggtgtgaca	aaggaaatgg	gcgacggcat	gcatatccgt	900
ggtgacatca	atatctgcct	<b>gatgggtgat</b>	cctggtgtcg	ccaaatcgca	<b>attgct</b> gaaa	960
tatattgcca	aggttgctcc	acgaggc <b>gtg</b>	tacactactg	gacgaggtag	cagtggagtt	1020
ggtcttaccg	ctgctgttat	gagagaccct	gtaacggatg	<b>agatgggtgct</b>	ggagggagga	1080
gccctgggtt	tggcggacaa	tggcatttgc	tgtatcgatg	agttcgacaa	<b>gatggacgat</b>	1140
gccgatcgga	ctgctatcca	<b>tgaagtgatg</b>	gagcaacaga	ccatctccat	ttccaaggct	1200
ggcatcacaa	caaccctgaa	cgccgtaact	tccatttctg	gctgcagcca	ttctttttt	1260
<b>atggac</b> ggaa	caaccgcga	atttttcca	<b>gtggagaaca</b>	tcacctccc	<b>cggcgcattg</b>	1320
ctctgcgtt	tcgacgtcat	gttcttcac	ntagacactc	cacagcggga	agccgatgag	1380
gaattagcca	accacgtcgc	gtacgtccac	<b>atgcacaaca</b>	aacacccga	ggtcgacgat	1440
gccggagtct	tgttcacacc	aatgaagtc	cgtagtaca	tcgctaaggc	gcgcacatat	1500
cggcctgtcg	tgccttcgtc	agttccgat	tacat <b>gg</b> tcg	gagcttacgt	<b>gcgaatgagg</b>	1560
aagcaacaaa	agagcgacga	agccagcaag	aagcaattct	ctcat <b>gtgac</b>	tcccgtact	1620
ttacttggtg	tcgttcgtct	ctcgcaagct	cttgcctgc	ttcgcttcag	cgaagaggtc	1680
atcagggagg	atgtcgatga	ggct <b>ttg</b> cgt	cttatcgagg	tcagcaaagc	atcactggcc	1740
aatgacggtc	attccggcat	agaccagagc	cccagtagca	agatctacaa	tctcattcgc	1800
ggtat <b>gcgcg</b>	agagcgggtc	tgccgtgtt	ggggacgggtg	aagagggtga	acttag <b>catg</b>	1860
agaaggatta	gggaacgcgt	tcttgccaaa	ggcttcacag	aggatcagct	cacaat <b>ggcg</b>	1920
atcgacgaat	acgaagagct	taatgtacgt	gtgtcagct	tgaatagtc	ttggtggctc	1980
ttactaat <b>gt</b>	<b>ctttgt</b> tcct	ttgcaggttt	ggcaagtcgt	taacaacgga	actcgctca	2040
ttttcttga	tctcgagggc	<b>gatgaggcaa</b>	tggacatata	ataggccagc	aaacggttgc	2100

agtttagact      ggcaaaaagt      aatcactgta      gtctgctga

2139

Additionally, the Sequence Listing provides that the amino acid sequence of the polypeptide encoded by SEQ ID NO:42779 is as follows:

Ser	Phe	His	Leu	Thr	Ala	Tyr	Ser	Phe	Lys	Asp	Asp	Val	Leu	Asp	Val	1	5	10	15
Ile	<b>Met</b>	Ser	Gln	Arg	Glu	Lys	Arg	Asn	Glu	Ala	<b>Met</b>	Ala	<b>Met</b>	Ala	Ala	20	25	30	
Glu	Ala	Asp	<b>Met</b>	Asp	Ala	Ala	Ala	Ala	Pro	Ser	<b>Met</b>	Phe	Pro	Pro	Glu	35	40	45	
<b>Leu</b>	Thr	Arg	Arg	Tyr	Thr	Leu	Asn	Phe	Lys	Pro	Leu	Thr	Pro	Ser	Gly	50	55	60	
Ser	Ser	Ser	Asp	Arg	Tyr	Ser	Lys	Ala	Leu	Ala	Val	Arg	Asn	<b>Val</b>	Arg	65	70	75	80
Ala	Glu	His	Leu	Gly	Ser	Leu	Ile	Thr	Val	Arg	Gly	Ile	Thr	Thr	Arg	85	90	95	
Val	Ser	Asp	Val	Lys	Pro	Ser	Val	Gln	Ile	Asn	Ala	Tyr	Thr	Cys	Asp	100	105	110	
Arg	Cys	Gly	Cys	Glu	<b>Val</b>	Phe	Gln	Pro	Val	Thr	Thr	Lys	Gln	Phe	Leu	115	120	125	
Pro	<b>Met</b>	Thr	Glu	Cys	<b>Leu</b>	Ser	Glu	Glu	Cys	Lys	Gln	Asn	Asn	Ser	Lys	130	135	140	
Gly	Gln	Leu	Phe	Leu	Ser	Thr	Arg	Ala	Ser	Lys	Phe	Val	Pro	Phe	Gln	145	150	155	160
Glu	Val	Lys	Ile	Gln	Glu	Met	Ala	Asp	Gln	Val	Pro	Val	Gly	His	Ile	165	170	175	
Pro	Arg	Thr	Leu	Thr	Ile	His	Cys	His	Gly	Ser	Leu	Thr	Arg	Gln	Leu	180	185	190	
Asn	Pro	Gly	Asp	Val	Val	Asp	Val	Ala	Gly	Ile	Phe	Leu	Pro	Thr	Pro	195	200	205	
Tyr	Thr	Gly	Phe	Arg	Ala	Ile	Arg	Ala	Gly	Leu	<b>Leu</b>	Thr	Asp	Thr	Tyr	210	215	220	
<b>Leu</b>	Glu	Ala	Gln	His	Ile	Thr	His	His	Lys	Lys	Ser	Tyr	Asn	Asp	Leu	225	230	235	240
Thr	<b>Met</b>	Asp	Ser	Gln	Thr	Leu	Arg	Lys	Ile	Glu	Gln	Tyr	Gln	Lys	Ser	245	250	255	
Gly	Asn	<b>Met</b>	Tyr	Glu	Tyr	Leu	Ser	Arg	Ser	Ile	Ala	Pro	Glu	Ile	Tyr	260	265	270	
Gly	His	Leu	Asp	Val	Lys	Lys	Ala	<b>Leu</b>	Leu	Leu	Leu	Leu	Ile	Gly	Gly	275	280	285	
Val	Thr	Lys	Glu	<b>Met</b>	Gly	Asp	Gly	Met	His	Ile	Arg	Gly	Asp	Ile	Asn	290	295	300	
Ile	Cys	Leu	<b>Met</b>	Gly	Asp	Pro	Gly	Val	Ala	Lys	Ser	Gln	<b>Leu</b>	Leu	Lys	305	310	315	320
Tyr	Ile	Ala	Lys	Val	Ala	Pro	Arg	Gly	<b>Val</b>	Tyr	Thr	Thr	Gly	Arg	Gly	325	330	335	
Ser	Ser	Gly	Val	Gly	Leu	Thr	Ala	Ala	Val	Met	Arg	Asp	Pro	Val	Thr	340	345	350	
Asp	Glu	<b>Met</b>	<b>Val</b>	Leu	Glu	Gly	Gly	Ala	Leu	Val	Leu	Ala	Asp	Asn	Gly	355	360	365	
Ile	Cys	Cys	Ile	Asp	Glu	Phe	Asp	Lys	<b>Met</b>	Asp	Asp	Ala	Asp	Arg	Thr	370	375	380	

Ala	Ile	His	Glu	<b>Val</b>	<b>Met</b>	Glu	Gln	Gln	Thr	Ile	Ser	Ile	Ser	Lys	Ala	385	390	395	400
Gly	Ile	Thr	Thr	Thr	Leu	Asn	Ala	Val	Thr	Ser	Ile	Ser	Gly	Cys	Ser	405	410	415	
His	Ser	Phe	Phe	<b>Met</b>	Asp	Gly	Thr	Thr	Arg	Glu	Phe	Phe	Pro	<b>Val</b>	Glu	420	425	430	
Asn	Ile	Thr	Phe	Pro	Ala	Ala	<b>Leu</b>	Leu	Ser	Arg	Phe	Asp	Val	Met	Phe	435	440	445	
Phe	Ile	Xaa	Asp	Thr	Pro	Gln	Arg	Glu	Ala	Asp	Glu	Glu	Leu	Ala	Asn	450	455	460	
His	Val	Ala	Tyr	Val	His	<b>Met</b>	His	Asn	Lys	His	Pro	Glu	Val	Asp	Asp	465	470	475	480
Ala	Gly	Val	Leu	Phe	Thr	Pro	Asn	Glu	Val	Arg	Gln	Tyr	Ile	Ala	Lys	485	490	495	
Ala	Arg	Thr	Tyr	Arg	Pro	Val	Val	Pro	Ser	Ser	Val	Ser	Asp	Tyr	<b>Met</b>	500	505	510	
Val	Gly	Ala	Tyr	Val	Arg	<b>Met</b>	Arg	Lys	Gln	Gln	Lys	Ser	Asp	Glu	Ala	515	520	525	
Ser	Lys	Lys	Gln	Phe	Ser	His	<b>Val</b>	Thr	Pro	Arg	Thr	Leu	Leu	Gly	Val	530	535	540	
Val	Arg	Leu	Ser	Gln	Ala	Leu	Ala	Arg	Leu	Arg	Phe	Ser	Glu	Glu	Val	545	550	555	560
Ile	Arg	Glu	Asp	Val	Asp	Glu	Ala	<b>Leu</b>	Arg	Leu	Ile	Glu	Val	Ser	Lys	565	570	575	
Ala	Ser	Leu	Ala	Asn	Asp	Gly	His	Ser	Gly	Ile	Asp	Gln	Ser	Pro	Ser	580	585	590	
Ser	Lys	Ile	Tyr	Asn	Leu	Ile	Arg	Gly	<b>Met</b>	Arg	Glu	Ser	Gly	Ala	Ala	595	600	605	
Ala	Val	Gly	Asp	Gly	Glu	Glu	Gly	Glu	Leu	Ser	<b>Met</b>	Arg	Arg	Ile	Arg	610	615	620	
Glu	Arg	Val	Leu	Ala	Lys	Gly	Phe	Thr	Glu	Asp	Gln	Leu	Thr	<b>Met</b>	Ala	625	630	635	640
Ile	Asp	Glu	Tyr	Glu	Glu	Leu	Asn	Val	Arg	Val	Val	Ser	Leu	Asn	Ser	645	650	655	
Pro	Trp	Trp	Leu	Leu	<b>Met</b>	Ser	<b>Leu</b>	Phe	Leu	Cys	Arg	Phe	Gly	Lys		660	665	670	
Ser	Leu	Thr	Thr	Glu	Leu	Ala	Ser	Phe	Ser	Trp	Ile	Ser	Glu	<b>Ala</b>	Met	675	680	685	
Arg	Gln	Trp	Thr	Tyr	Asn	Arg	Pro	Ala	Asn	Gly	Cys	Ser	Leu	Asp	Trp	690	695	700	
Gln	Lys	Val	Ile	Thr	Val	Val	Cys									705	710		

To illustrate that one with ordinary skill in the relevant art could easily identify the natural translation initiation site and that accordingly, Applicants had possession of the claimed invention at the time of filing, Applicants have identified the natural translation initiation sites, which correspond to ATG, GTG or TTG, present within the claimed structure of SEQ ID NO:20623 by presenting them in **bold** font. In addition, Applicants have provided the coding portion of the amino acid sequence encoded by SEQ ID NO:42779 and have presented the corresponding natural translation initiation sites in **bold** font. Applicants respectfully assert that

the structures of both the nucleic acid corresponding to SEQ ID NO:20623, and the polypeptide SEQ ID NO:42779 encoded thereby, are clearly disclosed in the Specification and in particular in the Sequence Listing. Accordingly, in the usage of the present Specification, *A. fumigatus* polypeptides encoded by sequences disclosed include polypeptides encoded within the disclosed open reading frames beginning from a start codon identifiable therein.

Despite the Examiner's allegations that Applicants have failed to adequately describe the structure of the nucleotides, such allegations do not *per se* reflect non-compliance with the written description requirement of 35 U.S.C. §112, first paragraph. By failing to provide reasons why one of ordinary skill in the art would not have recognized that Applicants were in possession of the claimed invention in view of the disclosure set forth in the application, the Examiner has failed to establish a *prima facie* case in support of his conclusion that Applicants have allegedly failed to comply with the written description requirement.

The Examiner has failed to substantiate his conclusion that the claimed sequence is a fragment of a full length protein. M.P.E.P. § 2144.03 states that the standard of review applied to findings of fact is the substantial evidence standard. Compliance with written description is a fact based inquiry. The Examiner appears to be making statements that the fact the sequence is a fragment is well known based on the assertion that codons are stop/start codons. Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts are asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration* and being well known. (emphasis added) See *In re Ahlert* 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (CCPA 1970). It is not appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. Conclusory statements are insufficient. The Examiner must set forth the rationale upon which he relies in rendering his conclusions. In this case, the Examiner concludes that the claimed sequence is a fragment of a full length protein and not a complete sequence without providing a clear rationale why this would be well-known. Additionally, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. The Examiner must

provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. *See In re Soli*, 317 F.2d 941, 945-46, 137 U.S.P.Q. 797, 800 (CCPA 1963). Applicants respectfully assert that the Examiner has failed to provide scientific reasoning to support his conclusion that the claimed sequence is a fragment of a full length protein and not a complete sequence.

Applicants respectfully assert that the structures of both the nucleic acid corresponding to SEQ ID NO:20623 and the polypeptide SEQ ID NO:42779 encoded thereby, are clearly disclosed in the Sequence Listing. Applicants respectfully maintain that in light of the present disclosure, one of ordinary skill in the relevant art could easily identify the correct start codon in the open reading frame and that Applicants had possession of the claimed invention at the time of filing.

Claims 1-13 have also been rejected by the Examiner as the Specification allegedly fails to describe the common attributes or structural characteristics that identify members of the genus. Claims 11-13 have been cancelled by the present amendment, thus rendering any rejection of those claim moot. Specifically, the Examiner alleges that without providing both a start and stop codon for SEQ ID NO:20623 one of skill in the art would reasonably conclude that the disclosure fails to provide a representative number of species to describe the genus. Applicants respectfully disagree.

As stated on page 1102 of the Federal Register, Vol. 66, No. 4, disclosure of a single species can provide an adequate written description of a generic claim, if one skilled in the art would recognize that the disclosure of the species includes the genus:

The Guidelines now indicate that a single species may, in some instances, provide an adequate written description of a generic claim when the description of the species would evidence to one of ordinary skill in the art that the invention includes the genus.

One skilled in the art would recognize that Applicants had possession of the claimed nucleic acid and amino acid sequences. One of ordinary skill in the art would be able to “visualize or recognize the identity of the members of the genus” of Applicants’ claimed subject matter (*University of California v. Eli Lilly and Co.*, 43 U.S.P.Q.2d 1398, 1406 (Fed. Cir. 1997)).



The Court of Appeals for the Federal Circuit held that because the Applicant in *Fiers v. Sugano*, 25 U.S.P.Q.2d 1601, 1605 (Fed. Cir. 1993), cited by the Examiner, did not disclose any nucleic acid sequence, the application failed to satisfy the written description requirement since the application could not reasonably convey to one skilled in the art that the party had possession of the claimed subject matter. In particular, the *Fiers* court stated:

An adequate written description of a DNA requires more than a mere statement that it is part of the invention and reference to a potential method for isolating it; what is required is a description of the DNA itself. *Id. at 1606*.

Unlike the Applicant in *Fiers*, who did not disclose any nucleic acid sequence, Applicants of the instant invention have provided both the nucleic acid and the corresponding amino acid sequence information for the claimed subject matter (*Id.*). Applicants have not “merely” made a statement regarding a nucleic acid sequence. Thus, Applicants’ claimed invention meets the requirements of 35 U.S.C. § 112, first paragraph, under the written description guidelines set forth in the Federal Register. As discussed *supra*, Applicants assert that the written description provided in the Specification would convey to those of ordinary skill in the art that the invention includes the genus and that Applicant was in possession of the claimed genus. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph is respectfully requested.

35 U.S.C. § 112, first paragraph Rejection – Enablement

The Examiner has also rejected Claims 11-13 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, the Examiner states that Claims 11-13 “contain subject matter which was not described in the Specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.” In order to expedite prosecution, and not to concede to the Examiner’s rejection, Applicants have canceled Claims 11-13 and reserve the right to pursue the subject matter of these claims in a divisional and/or continuation application.

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the finality of the action be removed and that the application be passed to issue. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (781) 398-2548.

Respectfully submitted,

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